

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

74-1403 ORIGINAL

To be argued by
IRVING ANOLIK

B
P/S

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

vs.

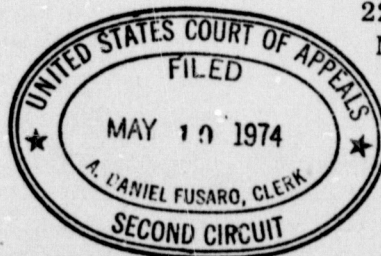
CALVIN WILLIAMS,

Defendant-Appellant.

*On Appeal from the United States District Court for
the Southern District of New York*

APPELLANT'S BRIEF AND APPENDIX

IRVING ANOLIK
Attorney for Defendant-Appellant
225 Broadway
New York, New York 10007
(212) 732-3050



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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
Docket No. 74-1463
-----X

UNITED STATES OF AMERICA,

Appellee,

vs.

CALVIN WILLIAMS,

Defendant-Appellant.

-----X
DEFENDANT-APPELLANT'S BRIEF

STATEMENT

Defendant-appellant, CALVIN WILLIAMS, appeals from an order of the United States District Court for the Southern District of New York rendered the 26th day of February, 1974, which denied reconsideration of an order of June 28, 1973, which order had declined to grant a hearing to the appellant pursuant to 28 U.S.C. 2255 on the grounds that his conviction for a drug violation under Indictment Number 71 Cr. 831 had been obtained unconstitutionally and improperly.

The denial by the Court was quite shocking in view of the fact that the Government had consented to a hearing because one Robert Roseboro, a Government Informer

who was allegedly the source of the information against WILLIAMS, testified under oath in a subsequent proceeding, UNITED STATES v. MANFREDI, 72 Cr. 810 at pages 432 through 434 of that transcript, that CALVIN WILLIAMS was not involved in the drug conspiracy of which he was convicted.

Judge Palmieri, in the Court below, indicated that there was overwhelming proof at WILLIAMS' trial that he had been properly convicted. Reconsideration was asked for because apparently the District Court in its original decision did not mention the fact that the Government had consented to a hearing.

The determination of Judge Palmieri that there was overwhelming evidence linking CALVIN WILLIAMS with the crime of which he was convicted under 71 Cr. 831, is very difficult to comprehend in view of the fact that of the three defendants on trial, including WILLIAMS, two were acquitted, namely Connie McNeill and Lolita Colasar. This hardly indicates that there was overwhelming evidence and we submit that a review of that record shows the contrary.

Roseboro did not testify in the trial under indictment Number 71 Cr. 831. If the Government at that time had been aware that he would testify the way he testified at the MANFREDI case, then, of course, that fact should have been made known under BRADY v. MARYLAND, 373 U.S. 83, because it would have been highly exculpatory. The colloquy during the MANFREDI trial, pages 432 through 434, revealed the following:

"Q. Isn't it a fact that you told the government there that these young ladies and the other people were involved in that crime? A. No, I didn't.

Q. You didn't? A. No.

Q. Did you tell them they were not involved? A. On a few occasions I told them they wasn't involved.

Q. They were not involved? A. Right.

Q. You told them nobody else was involved except yourself? A. Yes.

Q. Is that the truth? A. To my knowledge, yes."

The Government, in the highest traditions of fairness and certainly desiring to avoid a possible injustice, consented to a hearing. The denial of that hearing without an investigation of the facts of the case and without

affording an opportunity to confront Roseboro in an adversary proceeding, was extraordinary and highly prejudicial. Accordingly, WILLIAMS has prosecuted this appeal.

ARGUMENT

POINT I

THE COURT BELOW ERRED IN DENYING A HEARING TO APPELLANT ON HIS ALLEGATION THAT A GOVERNMENT INFORMER, ROBERT ROSEBORO, HAD, IN ESSENCE, EXCULPATED HIM FROM INVOLVEMENT IN THE CASE IN WHICH HE WAS CONVICTED WHEN ROSEBORO TESTIFIED IN THE MANFREDI TRIAL. IT WAS INCONCEIVABLE THAT THE COURT BELOW SHOULD DENY A HEARING IN VIEW OF THE FACT THAT THE GOVERNMENT CONSENTED TO THE HEARING.

It is very distressing that WILLIAMS should be obliged to appeal to this Court for a hearing in connection with an application under 28 U.S.C. 2255, wherein he is alleging that a Government informer has revealed evidence under oath which seems to exculpate him from involvement in the case in which he has been convicted and is now serving an eight year sentence for a drug violation.

The United States Attorney's office does not, of course, concede the position of WILLIAMS to be the same as its own and opposes ultimate relief. Nevertheless, in the Court below, the Government recognized that the testimony of Robert Roseboro in the case of UNITED STATES v. MANFREDI appeared to exculpate WILLIAMS from involvement in the crime for which he had been convicted. We have quoted the testimony in the foregoing statement in this brief.

The Court below was apparently unaware of the fact that the Government had consented to a hearing initially. On the motion for reconsideration, the Court wrote another decision denying relief, quoting the language of the statute wherein it states, inter alia, that the records and files conclusively demonstrate that WILLIAMS' allegations were "palpably baseless".

This is quite a position to take in view of sworn testimony in the United States District Court for the Southern District of New York, apparently exculpating this defendant, coupled with the statement of the United States Attorney's office that it consents to a hearing.

At WILLIAMS' trial, the agents referred to Roseboro's incriminating statements.

The author of this brief has handled many post-conviction applications and it is extremely rare that the United States Attorney's office consents to a hearing. For the Court below to then brand the petition as "palpably baseless" is so inconsistent with reality that it must be assumed that the Court has not fully appreciated the importance and significance of the testimony of Roseboro.

It must also be borne in mind that of the three persons on trial in the case in which WILLIAMS was convicted, two were acquitted. Roseboro was not produced to testify, although presumably he was one of the co-defendants and co-conspirators in that case.

The Court below viewed this petition for relief as not entitled to even the slightest bit of consideration. It would appear that without a hearing it was determined to rule that the testimony of Roseboro, apparently exculpating WILLIAMS, did not mean what it apparently said. There was certainly an obligation on the part of the

Court to take every possible measure to avoid error and to prevent an injustice from being done. WILLIAMS has consistently maintained that he was innocent.

The right of cross-examination and confrontation is guaranteed by the Sixth Amendment of the United States Constitution. The appellant herein has never had an opportunity to confront Robert Roseboro, although agents indicated in WILLIAMS' trial that Robert Roseboro, a co-defendant and co-conspirator, had been dealing with appellant. (See KIRBY v. UNITED STATES, 174 U.S. 47; SMITH v. ILLINOIS, 390 U.S. 129; POINTER v. TEXAS, 380 U.S. 400; MOTES v. UNITED STATES, 178 U.S. 458, 471; and BARBER v. PAGE, 390 U.S. 719).

The determination of the District Court in this case, in essence, precludes WILLIAMS from ever confronting Roseboro, although it may well be that Roseboro could exculpate him completely!

In the Appendix on the appeal from the original judgment of conviction in UNITED STATES v. CALVIN WILLIAMS, Docket Number 71-1111, the Government specifically declared that the defendant-appellant herein was being

charged as a co-conspirator of Robert Roseboro (a45, p. 786, Trial Record). Roseboro swore in MANFREDI that this was not so:

If in fact Roseboro had never testified the way he did in the MANFREDI case and WILLIAMS was merely speculating, then perhaps we could understand the position of Judge Palmieri in the Court below, but faced with the express and unequivocal testimony of Roseboro, it is difficult to understand how the Judge below could possibly have come to the conclusion that he did without a hearing.

WILLIAMS is languishing in jail, perhaps for a crime he never committed. The Government has offered and consented to hold a hearing at which there can be a confrontation of Roseboro, whose indirect evidence through agents helped to convict WILLIAMS initially.

It is an essential ingredient of due process that a person facing or suffering a loss of liberty be given a full and fair hearing. (See Re ALLEN, 82 Vt. 365, 73 A. 1078, 1082; BARRY v. HALL, 98 F.2d 222; and cases cited supra).

This Court is requested to review the appendix and record of the initial appeal in the WILLIAMS case and it is submitted that after such a review, it must necessarily recognize that Roseboro played an important part in the conviction of WILLIAMS even though he was never produced as a witness. The WILLIAMS' trial Court record at pages 785-6 declared:

" . . . it is a case in which these three defendants are being charged with having been co-conspirators of Roseboro and English, and the big question in the case is whether they were."

We must bear in mind that the jury was aware of the fact that Roseboro had pleaded guilty. Now we get subsequent sworn testimony from Roseboro in the MANFREDI case that apparently if he had been called as a witness in the WILLIAMS case, he would have exculpated him rather than inculpated him.

We submit that this case requires, at the very least, a hearing where the testimony and cross-examination of Roseboro will be allowed.

CONCLUSION

The orders of the Court below denying relief under 28 U.S.C. 2255, without a hearing, should be vacated with instructions to grant a full hearing.

Respectfully submitted,

IRVING ANOLIK
Attorney for Defendant-Appellant

DOCKET ENTRIES

1a

(89)

CRIMINAL DOCKET
UNITED STATES DISTRICT COURTJUDGE ~~WILLIAMS~~

71 CRIM 831

D. C. Form No. 100 Rev.

v

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	
RICHARD ENGLISH-All cts.	WALTER J. HIGGINS, JR., A
LOLITA KOWLESSAR-Ct. 1 only	
CONNIE McNEIL-Ct. 1 only	
ROBERT ROSEBORO-All cts.	For Defendant:
CALVIN WILLIAMS-Ct. 1 only	

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed ✓	Clerk	1/28/72 2/1/72	cc 2 time 4/5 T. news.	5	5
J.S. 3 mailed 2.5, 3 (1 case)	Marshal				
(# 1 (1, 2, 3)) XXXXXX Comp. #71-0412	Docket fee				
Title 26					
Sec. 4705(a) & 7237(b) Unlawful sales of heroin (cts. 2 & 3) & cocaine (ct. 4) not in pursuance of written order & conspiracy so to do (ct. 1) FOUR COUNTS					

DATE	PROCEEDINGS
8-3-71	Filed Indictment.
8-3-71	ROBERT ENGLISH-Warrant of arrest ordered. LASKER, J.
8-9-71	R. ROSEBORO-(atty present) pleads not guilty. Bail fixed at \$5,000.00. Motions returnable in 10 days. L. KOWLESSAR-(atty present) pleads not guilty. Bail fixed at \$500.00. Motions returnable in ten days. C. McNeil... no appearance by deft. or counsel adj'd to 8-16-71. C. Williams.
	TENNEY, J.
8-10-71	LOLITA KOWLESSAR- Filed notice of suppression by Westler, Westler & Hyman., 511 Fifth Ave, N.Y.C. PHONE: 682-8317.
8-3-71	RICHARD ENGLISH-Warrant of arrest ordered.

Docket Entries

2a

71 Cr. 831

.2..

DATE	PROCEEDINGS
8-12-71	Deft Connie McNeil fails to appear, (atty Leonard Levenson present). The Court directs entry of plea of NOT GUILTY. Bail cont'd personal recognizance bond. Deft Calvin Williams (atty present). Deft pleads not guilty. Bail cont'd (\$24,000.00) PALMIERI, J.
8-18-71	CALVIN WILLIAMS- Filed notice of appearance by Russo, Stein, Caiola & Victor, 849 St. Ann's Ave, Bronx, N.Y. 10456 PHONE: 292-4860.
8-19-71	ROBERT ROSEBORO- Filed notice of appearance by RUBIN, GOLD & GELLER., by Alvin Geller, Esq, 299 Broadway, N.Y.C. PHONE: 233-3330.
8-19-71	CONNIE McNEILL- Filed notice of appearance by LEONARD LEVENSON, 11 Park Place, N.Y.C. PHONE: Re 2-0522.
8-20-71	CALVIN WILLIAMS- Filed notice of motion for a bill of particulars, discovery and inspection and hearings and affidavit. PALMIERI, J.
8-20-71	CALVIN WILLIAM Filed memo- of law in support of motion for bill of particulars, discovery and inspection and hearings and affidavit. PALMIERI.
8-24-71	CONNIE McNEILL- Filed motion order granting transcripts and affidavit. PALMIERI, J.
8-30-71	KRICKER- Bench warrant issued.
10-18-71	McNEIL- filed memo-endorsed on motion dtd 8-24-71., "Motion granted to the extent consented to by the Govt. Denied in all other respects. See minutes of 10-14-71." (m/n) PALMIERI, J.
10-18-71	C. WILLIAMS- filed memo-endorsed on motions dtd 8-20-71., "Motion granted to the extent consented to by the Govt. Denied in all other respects. See of 10-14-71." (m/n) PALMIERI, J.
10-29-71	RICHARD RICHARD ENGLISH - Filed the following papers received from Magistrate Goettel: Docket sheet and complaint dated 6-1-71.
10-28-71	LOTIA KOWLESSAR) Filed the following papers received from Magistrate Goettel CONNIE McNEILL) Docket sheets (4); complaint dated 2-18-71 and CJA Form 1 CALVIN WILLIAMS) appointing Leonard J. Levenson, Esq., 11 Park Place NYC for EDWARD WHITE) Deft. Connie McNeil.
11-29-71	Filed Government's b/p. (PALMIERI, J)
11-30-71	Robert Roseboro- Filed copy of deft's acknowledgment of his constitutional rights.
12-9-71	CALVIN WILLIAMS- filed deft's requests to change. Judge Palmieri.

DATE	PROCEEDINGS
12-9-71	Filed Govt's requests to charge. Judge Palmieri
12-9-71	Filed Govt's memorandum of law. Judge Palmieri
*10-14-71	Pre-trial conference held. (trial 10-27-71) Judge Palmieri
*10-27-71	Pre-trial conference held. Judge Palmieri
*11-24-71	Pre-trial conference held. Trial date 11-30-71. Judge Palmieri
*11-30-71	Deft Rosebarow-withdraws his plea of not guilty on each of counts 1,2,3, & 4 and PLEADS GUILTY to each of counts 1,2,3, & 4. Pre-sentence investigation ordered. Sentence 1-31-72 at 4:15. Bail cont'd. Trial begun with a jury as to defts Kowlessar, McNeil & Williams before Judge Palmieri.
12-1-71	Deft Connie McNeil not present. Trial cont'd without deft McNeil. Court orders a bench warrant 10:45 AM. At 3:30 P.M. Deft McNeil produced in Court on writ. Bail revoked and exonerated. Deft McNeil remanded. Trial cont'd with deft McNeil present.
12-2-71	Trial cont'd.
12-3-71	Trial cont'd.
12-6-71	Trial cont'd.
12-7-71	Trial cont'd.
12-8-71	Trial cont'd and concluded. Jury finds the deft Lolita Kowlessar not guilty on count 1.(only count named in). Deft McNeil not guilty on count 1.(only count named in) writ satisfied. Deft Williams GUILTY to count 1. Bail fixed at \$50,000.00. Deft remanded in lieu of bail. Hearing 12-9-71 at 11:30P., on bail. Judge Palmieri
12-9-71	Deft Williams bail revoked and deft remanded. Pre-sentence investigation ordered. Sentence 1-27-72 at 4:15. Judge Palmieri
12-27-71	C. WILLIAMS: Filed memo endorsed dated 12-23-71. Writ withdrawn. Denied. Motion to grant bail - after hearing. Motion denied. See transcript. EDELSSTEIN, CH. J.
1-4-71	Filed transcript of record of proceedings dtd. 12-23-71.
1-3-72	Filed Deft's request to charge Palmieri, J.
1-3-72	Filed Deft's request on voir dire. Palmieri, J.
1-11-72	Filed Petition for Writ of Habeas Corpus - (see transcript)
*1-23-72	Williams- Filed notice of appeal from judgment dtd. 1-27-72. Pd. \$5.00
*1-26-72	Salvia Williams - Filed Judgment - Deft sentenced (Atty present) to ELDT (8) YEARS on count 1 at a place of confinement to be designated by the Atty Gen. of N.J.

DATE	PROCEEDINGS
1-12-72	Connie McNeill- Filed copy 2 of C.J.A. form 20. Appointment of counsel, I. J. Levenson 11 Park pl. N. Y.C. Phone Re 2-0522. Voucher for expense. Mailed copy to Adm. off. Wash. D.C. Palmieri, J.
1-12-72	Leonard J. Levenson- Filed affidavit request for approval of a fee in excess of \$ 1000 for extraordinary services.
1-31-72	Roseboro- Filed Judgment(atty. present) It is adjudged that the deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of FIFTEEN(15) YEARS on counts 1, 2 and 3 to run concurrently with each other. Issued commitment and copies. Palmieri, J.
2-1-72	Filed Transcript of record of proceedings, dated 11/30/71, 12/1, 3, 6, 7, 8/71
2-1-72	Filed Transcript of record of proceedings, dated 12/1/71
2-1-72	Filed Transcript of record of proceedings, dated 12/23/71
2-9-72	Salvin Williams-Filed affidavit and order that duly authenticated clergy be permitted to perform said ceremony upon proof of proper identification. Palmieri, J.
2-17-72	Filed notice of certification of record on appeal to USCA
2-17-72	Roseboro- Filed Commitment & entered return, Deft. Delivered to the Sheriff, R.
2-17-72	Williams- Filed a return dated 1-19/71.
2-17-72	Williams- Filed a return dated 12-1-71.
3-27-72	Filed- Application and order that the transcript of proceedings of the pleading and sentencing of the deft. Robert Roseboro held on November 1971 and Jan. 31 1972 on Indictment 71 Cr. 831 be sealed. Palmieri, J.
4-4-72	Filed Transcript of record of proceedings, dated 1-22-72
2-26-72	Salvin Williams-Filed true copy of Judgment of the U.S.C.A. affirmed Judgment of district Court (Judgment entered 5-30-72) Clerk.,
3-1-72	Filed Marshall's return deft delivered on Jan. 27, 1972 to F.D. ROBERTS.
3-13-72	R. Roseboro - Filed notice of motion for an order permitting substitution of Jay Goldberg as Atty. of record. (Jay Goldberg, Esq., 299 11th Ave, NYC 100 Phone 374-1040)
3-13-72	R. Roseboro - Filed memo endorsed on above motion - granting substitution of Jay Goldberg as Atty. of record instead of Arvin Geller. - Palmieri, J. (a/m)
3-13-72	R. Roseboro - Filed affect. of Walter J. Higgins, Atty. His opposition to deft. motion for reduction of sentence is hereby withdrawn.

DATE	PROCEEDINGS
	ROBERT ROSEBORO
10-12-72	Filed Amended Judgment, judgment imposed Jan. 31, 1972 is reduced and modified. Deft is committed to the custody of the Atty. Gen'l or his representative for imprisonment for a period of FIVE (5) YEARS on each of counts 1, 2 and 3 to run concurrently with each other. Count 4 is dismissed on motion of deft's counsel with the consent of the Govt.... Palmieri, J..... Issued commitment and copies...
10-13-72	Roseboro-Filed affidavit of Alvin Geller.
10-13-72	Roseboro- Filed transcript ordered sealed by the Court, Palmieri, J.
11-6-72	C. Williams-Filed Judgment from Supreme Court of the U.S. for petition of Writ of Certiorari. Petition denied. 10-10-72.
11-13-72	Commitment & return, Deft. Delivered to the U.S. Prison - 10-13-72
5-15-73	<i>Richard C. Galis</i> C... <i>Stated</i> because (X Deft) 13 () 2 () fugitive.. In ... respects this case. is ...
6-15-73	CALVIN WILLIAMS- Filed Govt affdvt of Robt. Roseboro in support of Gov't motion opposition to Deft's motion to vacate judgment.
6-25-73	Williams-Filed Govt's affidavit in opposition to vacate judgment of conviction.
6-28-73	Williams-Filed statement and motion to vacate sentence under 28U.S.C. 2255.
6-28-73	Williams-Filed memo. endorsed on deft's motion to vacate sentence. "Motion denied in all respects." It is so ordered. Palmieri, J. (mailed notice)
7-16-74	WILLIAMS - 7 Filed motion under 28:2255, and MEMO END. The motion for reconsideration is granted. *** Upon reconsideration we find no merit to petitioner's demand for hearing on his 2255 petition which was denied. appeal not in good faith. Co... Tested & returned by ROBERT L. GARY

Docket Entries

6a

DATE

PROCEEDINGS

12-74 CALVIN WILLIAMS- Filed def't's notice of appeal from order rendered on Feb. 26-74, denying his application for vacating his judgment of conviction for a narcotics offense without a hearing. m/a

*10-26-71 Filed transcript of proceedings dated 8-12-74

*12-21-71 Filed remand on Calvin Williams

*2-14-72 Filed Remand on Connie Mc Neil

MOTION TO VACATE SENTENCE UNDER 28 U.S.C. 2255
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

7a

----- x
UNITED STATES OF AMERICA,

-v-

Indictment No.
71 Cr. 831

CALVIN WILLIAMS,

Defendant.

MOTION TO VACATE
SENTENCE UNDER
28 U.S.C. 2255

----- x
S I R :

PLEASE TAKE NOTICE that upon the annexed statement of IRVING ANOLIK, attorney for the defendant herein and upon the annexed affidavit of the defendant, CALVIN WILLIAMS, and upon all the proceedings heretofore had herein, and upon the record in the case of UNITED STATES v. MANFREDI, 72 Cr. 810, pages 432 to 434, a motion will be made before this Court, at the Courthouse, Foley Square, New York City, at a time to be fixed by Honorable Edmund L. Palmieri, United States District Judge, for an order granting a vacating of the judgment of conviction for violation of 26 U.S.C. 4705(a) or, in the alternative, a full hearing thereon pursuant to 28 U.S.C. 2255.

DATED: New York, New York
April 12, 1973.

Yours etc.,

IRVING ANOLIK
Attorney for Defendant
225 Broadway
New York, New York 10007
RE.2-3050

TO: UNITED STATES ATTORNEY
Southern District of N.Y.
United States Courthouse
Foley Square
New York, New York 10007

STATEMENT OF IRVING ANOLIK IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA,

-v-

Indictment No.

71 Cr. 831

CALVIN WILLIAMS,

STATEMENT

Defendant.

- - - - - x

IRVING ANOLIK, an attorney at law duly admitted to practice in this Court, states that he had been retained by the defendant CALVIN WILLIAMS to handle his appeals from the judgment of conviction and, unfortunately, those appeals were unsuccessful.

In the recent case of UNITED STATES v. MANFREDI, however, 72 Cr. 810, one of the co-defendants in the instant case, namely Robert Roseboro, testified for the prosecution and, in the course of his cross-examination, was asked about the case involving the defendant CALVIN WILLIAMS (MANFREDI record, p.432).

The co-defendant, Roseboro, testified in the MANFREDI case further that neither WILLIAMS nor the other co-defendants were involved in the case in which CALVIN WILLIAMS was convicted.

Roseboro was specifically asked whether or not WILLIAMS and the other co-defendants were involved in the case and he stated that they were not involved. The colloquy, at pages 433 and 434 of the MANFREDI record is as follows:

"Q. Isn't it a fact that you told the government there that these young ladies and the other people were involved in that crime?

"A. No, I didn't.

"Q. You didn't?

"A. No.

"Q. Did you tell them they were not involved?

"A. On a few occasions I told them they wasn't involved.

"Q. They were not involved?

"A. Right.

"Q. You told them nobody else was involved except yourself?

"A. Yes.

"Q. Is that the truth?

"A. To my knowledge, yes."

The Court is, of course, aware of the fact that the other co-defendants, namely Connie McNeill and Lolita Colasar, were acquitted. The defendant WILLIAMS has consistently maintained his innocence in that case.

It is the position of the defendant herein that in view of Roseboro's testimony as a Government witness in the MANFREDI case, either the WILLIAMS judgment should be vacated or at least a full hearing should be granted, at which time Roseboro should be produced by the Government to testify.

The irony is that Roseboro was used by the Government in the MANFREDI case to testify that Joseph LaCosa was the source of narcotics in connection with Roseboro's and CALVIN WILLIAMS' arrest and, apparently, that CALVIN WILLIAMS was not the supplier, as was the theory in the case at bar.

We believe that fundamental fairness requires the relief requested herein because, if true, an innocent man has been serving time in Federal prison.

DATED: New York, New York
April 12, 1973.

s/ Irving Anolik
IRVING ANOLIK

AFFIDAVIT OF CALVIN WILLIAMS IN SUPPORT OF MOTION
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

11a

- - - - - x

UNITED STATES OF AMERICA,

-v-

Indictment No.
71 Cr. 831

CALVIN WILLIAMS,

AFFIDAVIT OF
DEFENDANT

Defendant.

- - - - - x

STATE OF PENNSYLVANIA)
COUNTY OF) ss.:

CALVIN WILLIAMS, being duly sworn, says:

I am the defendant in the abovenamed case. I have instructed my attorney, IRVING ANOLIK, to file a motion to vacate the judgment of conviction because I am not guilty of the crime for which I have been convicted.

A Government witness, ROBERT ROSEBORO, in the case of UNITED STATES v. MANFREDI, etal, has specifically stated that I was not involved in the case for which I was convicted. Roseboro cooperated with the Government and he would certainly know who was involved in the case.

I therefore ask that the Court vacate the judgment of conviction since I am completely innocent and am serving time in jail for no reason.

[Signature]
Notary Public
(Act of) of 1955
New York City, N.Y.

[Signature]
CALVIN WILLIAMS

Sworn to before me this
19th day of March, 1973.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, : AFFIDAVIT
- v - : 71 Cr. 831
CALVIN WILLIAMS, :
Defendant. :

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

WALTER J. HIGGINS, JR., being duly sworn, deposes
and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York, and as such, am familiar with and in charge of the above captioned matter.

2. I make this affidavit in opposition to the motion of Calvin Williams, pursuant to Section 2255 of Title 28, United States Code, for an Order of this Court vacating a judgment of conviction for a violation of Sections 4705(a) and 7237(b) of Title 26, United States Code.

3. On January 27, 1972, a judgment of conviction of Williams was entered on Indictment 71 Cr. 831 in the United States District Court for the Southern District of New York imposing an eight year term of imprisonment after a trial before the Honorable Edmund L. Palmieri, United States District Judge, and a jury. On appeal the

United States Court of Appeals for the Second Circuit affirmed the conviction from the bench (Docket No. 72-1111) and a petition for a writ of certiorari was denied by the United States Supreme Court.

4. In the instant application Williams seeks to vacate the conviction on the ground that a co-defendant who pleaded guilty to all five counts of Indictment 71 Cr. 831, subsequently testified in the trial of United States v. Manfredi, et al., 72 Cr. 810, in the United States District Court for the Southern District of New York, in a manner inconsistent with the Government's proof in the Williams' trial.

GOVERNMENT'S EVIDENCE

5. At trial, the Government's proof overwhelmingly established an elaborate narcotics network in which defendant Calvin Williams was a supplier, defendant Robert Roseboro was his wholesaler-retailer, defendant Richard English was Roseboro's courier, and "Bobby", an informant, was the "purchaser". Special Agent Allen Johnson of the Bureau of Narcotics and Dangerous Drugs, acting in an undercover capacity, played the role of "Bobby's" representative or "man".

On October 19, 1970, Agent Johnson, who was assigned to the New Orleans office of the Bureau of Narcotics and Dangerous Drugs, checked into the Sheraton-Holiday Inn in Manhattan where he was introduced to Richard English by "Bobby" who had accompanied him from New Orleans. All three went to Robert Roseboro's house in the Bronx

Affidavit of Walter J. Higgins, Jr. In Opposition 14a
where Agent Johnson was introduced to Roseboro. While driving around New York that night, "Bobby", in Roseboro's presence, handed Agent Johnson a brown bag containing approximately 210 grams of heroin hydrochloride and 108 grams of cocaine hydrochloride. These narcotics were presumably paid for with \$10,000 in cash which had been given to "Bobby" earlier by Agent Johnson (Tr. 65-71, 75-77).*

On October 28, 1970, Agent Johnson returned to New York, checked in at the Sheraton Motor Inn in Manhattan and met Roseboro in his hotel room. At this time, Agent Johnson gave Roseboro \$10,000.00 in cash, and Roseboro stated that the package would be delivered later that afternoon. The following day, English delivered to Agent Johnson at his hotel room a plastic bag containing heroin and instructed Agent Johnson to "tell the man in New Orleans that Rosie says he owes \$2,500.00 more" (Tr. 78-90, 546; GX 5C, 5E).

In November, 1970, based on the above purchases of narcotics by Agent Johnson, a court authorized federal wiretap was installed on Roseboro's telephone at this home in the Bronx (Tr. 162-165). In the evening of December 5, 1970, Roseboro placed a telephone call to a "Calvin" at a public telephone located in the Glamour Inn at 2130 Seventh

* References to "Tr." are to the stenographic transcript of proceedings and to "GX" are to Government exhibits in evidence.

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Avenue in Manhattan. During this conversation (CK 134),
Rosebere placed an order for several "pounds" of "wine"
and "whiskey" and "Calvin" agreed to deliver a "pound of
wine" the following evening at 8:00 P.M. (Tr. 144-47,
219-21).

The next day, December 6th, English left Rosebere's
residence in the Bronx at about 7:30 P.M. and drove to the
Glamour Inn, where he met with Calvin Williams. at about
7:50 P.M. After what appeared to be a heated conversation
with Williams, English left the Glamour Inn and returned
directly to Rosebere's residence. Later on the same evening,
Rosebere telephoned "Calvin" at the Glamour Inn and before
had a chance to complain that all he had received was a
sample, "Calvin" agreed to take "it" back and give him
possibly two or three "pounds" the following evening at
7:00 P.M. (Tr. 166-74, 517-18; CK 3K4).

On December 7, 1970, at 7:00 P.M., English met
Calvin Williams and an unidentified male in front of the
Glamour Inn. After a short conversation, English and the
unidentified male proceeded to 128th Street and Fifth
Avenue where English parked his car, and his passenger left
the area. English waited at his car for approximately
twenty-five minutes before returning alone to the Glamour
Inn, English was observed running out of the bar, jumping
in his car and driving at a high rate of speed to Rosebere's
residence in the Bronx. Minutes later, Rosebere telephoned
"Calvin" at the Glamour Inn inquiring as to what had happened
"Calvin" responded that Rosebere's "man" had been "trailed"

Affidavit of Walter J. Higgins, Jr. in Opposition 16a
so there was nothing he ("Calvin") could do that night
(Tr. 176-79, 183-84, 519-20; GX 314).

On December 10, 1970, Rosebero received a telephone call from "Bobby" in New Orleans and was informed that "Al" (Agent Johnson) would be coming to New York the following day to purchase \$10,000 worth of narcotics. At the conclusion of this conversation, Rosebero immediately telephoned "Calvin" at the Glamour Inn and ordered "one quarter", meaning one-quarter of a kilogram of narcotics, which Rosebero claimed was due him from a previous transaction. "Calvin" instructed Rosebero to check with him the following night at 8:00 P.M. (Tr. 237, 238; GX 306).

On December 11, Agent Johnson checked in at the Sheraton Motor Inn in Manhattan, where he received a telephone call from Rosebero telling him that "Richard" would be there later to pick up the money. Rosebero then called "Calvin", who, over Rosebero's protestations, told him that he didn't have "it" yet and probably wouldn't get "it" until later that evening at about 10:00 or 11:00 P.M. (GX 384). At approximately 10:00 P.M. on the same evening, Rosebero and English went to the Glamour Inn where Rosebero entered the bar alone and exited a few minutes later in the company of Calvin Williams with whom he had a short conversation. Williams thereupon re-entered the Glamour Inn and Rosebero and English drove off. Approximately one hour later, English arrived at Agent Johnson's hotel room where he was given \$10,000 in cash by Agent Johnson. English then left the hotel and met with Rosebero a few blocks away (Tr. 90-93, 199-202, 239-40).

On December 15, 1970, English delivered to Agent Johnson at the Sheraton Inn approximately 429.9 grams of heroin hydrochloride and 11.53 grams of cocaine hydrochloride (Tr. 93-98, 543-55; GX 6C and 7 C).

INSTANT APPLICATION

6. Williams contends that because Roseboro testified at the Manfredi trial, in substance, that the one-half kilogram Roseboro sold to Agent Johnson on December 15, 1970, was purchased from someone other than Williams, the instant judgment of conviction should be vacated. A fair review of Roseboro's complete testimony in United States v. Manfredi, 72 Cr. 810, (Tr p. 380-521) and the facts set forth above, clearly indicates that Roseboro did not testify in a manner inconsistent with the Government's proof in the Williams trial. The Government's proof at Williams trial showed that he, Williams, was the first person Roseboro contacted regarding the purchase of narcotics after the informant, "Bobby", placed the order for one-half kilogram on December 10th. Thereafter, the evidence showed another contact between Williams and Roseboro before the delivery of the one-half kilogram on December 15th. Moreover, the Government did not argue that one-half kilogram (GX 6C) was obtained from Williams. However, since Williams suggests that Roseboro told the Government Williams was not involved, the Government consents to a hearing on this matter at such time as is convenient to the Court.

WALTER J. HIGGINS, JR.
Assistant United States Attorney

Sworn to before me this

day of June, 1973.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

-v-

:

AFFIDAVIT

CALVIN WILLIAMS,

71 Cr.831

Defendant.

:

-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

ROBERT ROSEBORO, being duly sworn, deposes
and says:

1. I am presently serving a five year term
of imprisonment for a violation of the federal narcotics laws
pursuant to a judgment of conviction entered under Indictment
71 Cr. 831 in the United States District Court for the
Southern District of New York.

2. I make this Affidavit in support of the
Government's opposition to the motion of Calvin Williams
pursuant to Section 2255 of Title 28, United States Code to
vacate the judgment of conviction entered under Indictment
71 Cr. 831.

3. I was arrested on the underlying case
in February 1971. From February 1971 to approximately
July 1971, I cooperated with Special Agents of the Bureau of
Narcotics and Dangerous Drugs. In July 1971, I withdrew my
cooperation and was subsequently indicted in the aforemention-
ed Indictment 71 Cr. 831 on August 3, 1971.

4. On November 30, 1971, I entered a plea of guilty to each count of Indictment 71 Cr. 831 and until my sentencing on January 31, 1972 again cooperated to a limited extent with Government agents. On January 31, 1972 I was sentenced to a term of imprisonment for 15 years on Indictment 71 Cr. 831.

5. In August, 1972 I was brought back to the United States Attorney's office for the Southern District of New York and was asked to cooperate and testify in the case of United States v. Manfredi, et al., 72 Cr. 810. I agreed to testify against a person known to me as Joey LaCosa, a defendant in that case. During my debriefing at that time I told Government agents for the first time that the 1/2 kilogram of heroin I sold to Special Agent Al Johnson on December 15, 1970 was in fact obtained by me from Joey LaCosa. Prior to that interview, I never told any Government agent who I in fact had obtained that particular 1/2 kilogram of heroin from. When I testified at the trial of United States v. Manfredi, et al., I testified truthfully in that I never told Government agents that I had obtained that particular 1/2 kilogram of heroin from Calvin Williams. It is equally true that at the trial of United States v. Manfredi, et al. I was never asked when I first informed Government agents that the 1/2 kilogram I sold to Special Agent Johnson on December 15, 1970 was in fact obtained from Joey LaCosa.

6. Although the heroin I sold on December 15th was in fact obtained from Joey LaCosa, the heroin sold to Special Agent Johnson on October 19 and 28, 1970 was obtained from Calvin Williams. Moreover, when I received the order for 1/2 kilogram of heroin from "Bobby" on December 10,

WJH, JR:AS
72-0494

Affidavit of Robert Roseboro in Opposition

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1970 I immediately contacted Calvin Williams to inquire if he could supply me with the 1/2 kilogram of heroin. In substance, Williams told me he would check and in a conversation with him the following day told me essentially the same thing.

15/

ROBERT ROSEBORO

Sworn to before me this
14th day of June, 1973.

RALPH I. LEE
Notary Public, State of New York
No. 41-246238 Queens County
Term Expires March 30, 1975

JUNE 28, 1973:

This is a motion to vacate a judgment of conviction, after jury trial, for violation of Title 26 U.S.C. § 4705(a), or, in the alternative, for a hearing pursuant to 28 U.S.C. § 2255. The judgment of conviction was affirmed from the bench by the United States Court of Appeals for the Second Circuit on May 15, 1972 (Docket No. 72-1111). The substance of the petitioner's claim is that a co-defendant who pleaded guilty and who testified at a subsequent trial involving other defendants made statements under oath at that trial which establish the petitioner's innocence.

The petitioner's position is palpably baseless. The evidence of the petitioner's involvement in substantial drug transactions was supported by overwhelming proof at his trial completely unrelated to any testimony of the co-defendant referred to. Additionally, affidavits have been submitted upon this motion both by the co-defendant himself, Robert Roseboro, and by the Assistant United States Attorney who conducted the prosecution of the petitioner. These affidavits contain a clear review of the evidence which can result in only one conclusion -- namely, that the petitioner was properly convicted upon evidence independent of and unrelated to Roseboro's subsequent testimony; and that Roseboro's subsequent testimony in a different case cannot reasonably be construed to provide the petitioner with any valid basis for the assertion that he was innocent of the charge of which he was convicted.

Motion denied in all respects. It is so ordered.

EDMUND L. PALMIERI
U. S. D. J.

OPINION OF THE COURT BELOW ON RECONSIDERATION
DATED FEBRUARY 26, 1974

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UNITED STATES OF AMERICA v. CALVIN WILLIAMS, 71 Cr. 831

We treat the attached communications as a motion for reconsideration of petitioner's request for a hearing pursuant to 28 U.S.C. § 2255 (1970) which was denied by this Court on June 28, 1973, United States v. Calvin Williams, Docket No. 71 Cr. 831. The motion for reconsideration is granted.

The basis of the instant motion is that petitioner's § 2255 application was decided without an evidentiary hearing despite the government's consent to such a hearing. The spurious nature of this contention is manifested by the language of the statute itself. It specifies that a hearing shall be held "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief" This Court's opinion of June 28, 1973, leaves no doubt whatsoever that the Court was of the opinion that the files and record of the case were conclusive against the petitioner and the Court stated that petitioner's allegations were "palpably baseless."

While the government's consent to a hearing may be a factor in the Court's considerations, the fact nevertheless remains that the decision as to whether a hearing is necessary is exclusively the province of the discretion of the Court and where the allegations are insufficient in law, undisputed, immaterial, vague, conclusory, palpably false or patently frivolous, as was held here, a hearing is not required. Sanders v. United States, 373 U.S. 1, 1st (1963); Machribroda v. United States, 368 U.S. 487, 494 (1962); United States v. Malcolm, 432 F.2d 809, 812 (2d Cir. 1970).

Upon reconsideration we find that there is no merit to petitioner's demand for a hearing on his § 2255 petition which was denied on June 28, 1973. In respect of the in forma pauperis statute (28 U.S.C. § 1915 (a)), and Rule 24, Fed. R. App. P., it is certified that an appeal from this order is not taken in good faith. In this context, good faith is judged by an objective standard and if an appeal is frivolous it is not taken in good faith. Coppage v. United States, 379 U.S. 438, 445 (1962); United States v. Visconti, 261 F.2d 215, 218 (2d Cir. 1958), cert. denied, 359 U.S. 954 (1959).

It is so ordered.

Dated: February 26, 1974

EDMUND L. PALMIERI
U. S. D. J.

U.S. COURT OF APPEALS:SECOND CIRCUIT

U.S.A.,

Appellee,

against

WILLIAMS,

Defendant-Appellant.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

I, James Steele, being duly sworn,
 deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

250 West 146th Street, New York, New York
 That on the 10th day of May 19 74 at Foley Square, New York

deponent served the annexed Appellant's Brief and Appendix upon

Paul J. Curran-U.S. Attorney Southern Dist.

the 2 in this action by delivering ² true copy thereof to said individual ^{per}
 personally. Deponent knew the person so served to be the person mentioned and described in said
 papers as the Attorney(s) herein,

Sworn to before me, this 10th
 day of May 19 74

James Steele
 Print name beneath signature

JAMES STEELE

Robert T. Brin

ROBERT T. BRIN
 NOTARY PUBLIC, STATE OF NEW YORK
 NO. 31 - 0418950
 QUALIFIED IN NEW YORK COUNTY
 COMMISSION EXPIRES MARCH 30, 1975

